IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

**Panna Lal Maheshwari**
**Versus**
**Union of India and Anr.**

S.B. CIVIL WRIT PETITION NO.4993/2006

Date of Order : 14 August, 2007.

PRESENT
**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Shri S.K. Saksena for the petitioner.
Shri Ajay Shukla for
Shri K.K. Sharma for Union of India.
Shri B.S. Chhaba, Deputy Government Advocate for the State.

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**Reportable**

Petitioner Panna Lal Maheshwari aged 90 years, R/o Srinagar Road, Ajmer has filed this petition seeking a mandamus upon the respondents to grant him Swatantra Senani Samman Pension from

the date of his application made on 28/6/1988 alongwith arrears with interest @ 12% per annum.

**2)** Shri S.K. Saksena, learned counsel for the petitioner has argued that the petitioner submitted an application to the Union Government to grant him pension under the Swatantra Senani Samman Pension Scheme of 1980 duly supported by certificate of participation in National Independence Movement, certificate of Freedom Fighters, certificate of co-prisoners and recipients of Freedom Fighters' Pension namely, Shri Ram Narayan Choudhary and Shri Durga Prasad Choudhary. According to the scheme of 1980, petitioner was entitled for such

pension w.e.f. 1/8/1987. Petitioner participated in National Movement whenever Salt Agitation was launched by Mahatma Gandhi in 1930-31 and courted arrest. He was sentenced and was put behind the bars. He participated in Quit India Movement from 1942 and was subjected to torture during his arrest by the British Government. In fact, he was arrested many times during freedom movement from 1932-1947. It was contended that the contribution of the petitioner in the national movement was appreciated by late Shri Pandit Jawahar Lal Nehru, Dr.Rajendra Prasad, Seth Jamna Lal Bajaj, Thakkar Baba, Smt.Rajeshwari Nehru, Shri Jai Prakash Narain and Shri Heera Lal

Shastri who had visited the Harijan Kanya Pathshala, Jadhugar Basti (Harijan) Ajmer which was established by the petitioner. Petitioner when he was 16 years of age was also detained under the Defence of India Rules in the Central Jail Ajmer and was subjected to torture and punishment. Petitioner was nominated as a Special Invitee of the national council of All India Freedom Fighters' Samiti, New Delhi. A letter in this regard has been placed on record. Petitioner is Secretary of Swatantra Senani Samman Pension Samiti and Vice President and In-charge of All India Freedom Fighters' Committee, Rajasthan.

**3)** Learned counsel for the petitioner submitted that the application of the petitioner was acknowledged by the Minister for Home Affairs, New Delhi vide office communication dated 2/4/1993 stating that the matter pertaining to the request of the petitioner for grant of pension was being examined but nothing happened thereafter. In the circumstances, petitioner had served upon the respondents a notice for demand of justice on 31/5/2006 for grant of Swatantra Senani Samman Pension which also failed to evoke any response. Thereupon, he has been constrained to file this writ petition.

**4)** Learned counsel for the petitioner has in support of his arguments relied on the judgments of the Hon'ble Supreme Court as well as of this Court and other High Courts in **Mukund Lal Bhandari and others Vs. Union of India and others (AIR 1993 SC 2127), S.J. Pande Vs. P.K. Balakrishnan (AIR 1993 SC 2132), Gurdial Singh Vs. Union of India and others ([2001] 8 SCC 8), Smt.Ram Pyari Vs. Union of India (RLW 1988(1) 271), B.K. Nagaraj Vs. Union of India and others (AIR 2004 Karnataka 90), T.N. Dhar Vs. State of Rajasthan & Anr. (2002[2] CDR 1292 (Raj.) and Pyare Lal Mishra Vs. The State of Raj.& Ors.(1997 W.L.C.(Raj.)UC 248).**

Learned counsel for the petitioner also placed reliance on the judgment of the Apex Court in **Mukund Lal Bhandari and others Vs. Union of India and others : AIR 1993 SC 2127 decided on 14/5/1993.** On the strength of the said judgment, learned counsel for the petitioner submitted that the Hon'ble Supreme Court in that case observed that the Government should entertain an application of this nature irrespective of the date it is made and should scrutinise every application and the evidence produced in support thereof and dispose of the claim as expeditiously as possible. It was held that pension should be paid to the applicant from the date the original

application was made whether filed with or without requisite evidence.

**5)** This petition has been contested by Shri Ajay Shukla, learned counsel appearing for Union of India. He argued that the application of the petitioner dated 9/8/1988 was received in the Ministry of Home Affairs alongwith a letter of Shri S.B. Sindal, Member of Parliament (Lok Sabha) dated 18/3/1993. A similar application was received in the Ministry of Home Affairs along with a letter dated 16/3/1993 of Dr.Kartikeswar Patra, Member of Parliament. According to the Swatantra Senani Samman Pension Scheme of 1980, such an application was required to be accompanied by the

documentary evidence and routed through the concerned State Government but this was not done. Even then, the respondents examined the matter and rejected the claim of the petitioner vide letter dated 27/5/1993 being a delayed case. The Central Government also did not receive any recommendation of the State Government for grant of such pension to the petitioner which is one of the requisite conditions. Petitioner was also informed that grant of pension would only be possible in case the claim is supported by the necessary documents. Learned counsel for the petitioner on the strength of all the above referred decisions argued that the writ petition

be allowed. Since the petitioner failed to produce the documentary evidence in support of his claim of sufferings and State Government also did not recommend his case, there was no question of granting him any such pension. The other cases relied upon by the learned counsel for the petitioner are also distinguishable on facts. Relying on the provisions of the Scheme of 1980, learned counsel referred to the judgment of the Madras High Court in Writ Petition No.7707/2000 (Santhanam Vs. State of Tamil Nadu and others) wherein, it was held that one can be eligible for grant of pension only on fulfilling the conditions prescribed in the Scheme.

Since the petitioner has not mentioned any substantial error in the impugned decisions and has not produced any acceptable documentary evidence in support of his sufferings, hence, on account of non-availability of relevant certificates from the concerned authorities which is the pre-requisite condition for secondary evidence, his claim could not be accepted by the Government of Rajasthan for grant of Swatantra Senani Samman Pension. It was thus argued that there being no primary or secondary evidence with regard to sufferings of the petitioner for his participation in the Freedom Movement, he cannot be granted pension. It was

therefore prayed that writ petition be dismissed.

**6)** Shri B.S. Chhaba, learned Deputy Government Advocate for the State also opposed the the writ petition and submitted that though the petitioner is a recognised freedom fighter as per the Rajasthan Swatantra Senani Samman Pension Rules, 1959, according to which rules, the pension can be granted only on the basis of the participation in the freedom movement. However as per the Scheme of 1980, which is the Central Government Scheme, one is entitled to Swatantra Senani Samman Pension only if it is proved that he had suffered imprisonment of atleast six months. There was no

provision for relaxation of that criteria. It was submitted that though the petitioner has produced evidence for his participation in the freedom movement but no proof of the fact that he actually suffered imprisonment in jail was produced and, therefore, his case for grant of pension under the Scheme of 1980 could not be recommended to the Central Government. Criteria for grant of pension under the State Rules and the Central Rules are entirely different. While the petitioner may be entitled to receive pension under the State Rules but he is not under the Central Rules.

**7)** I have given my earnest consideration to the rival submissions

made by the learned counsel for the parties at the bar and perused the material available on record.

**8)** The Swatantra Senani Samman Pension Scheme of 1980 has provided the following conditions regarding imprisonment sufferings:-

> Imprisonment suffering:- A person who had suffered minimum imprisonment of six months (3 months in case of women SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidence:-
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> (a) Primary evidence : Imprisonment / detention from the concerned jail authority, District

Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release;

(b) Secondary evidence : In case record of the relevant period are not available, the secondary evidence in the form of 2 co-Prisoner's Certificates (CPCs) from freedom fighters who have proven jail sufferings of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government /Union Territory Administration concerned, after due verification of the claim and its genuineness certifies that documentary evidence from the official records in support of the claimed sufferings are not

available. In case the certifier happens to be a sitting or ex. MP or ex. MLA, only one certificate in place of two is required.

Where records of the relevant period are not available a Non-Availability of Record Certificate (NARC) from the concerned authority is a pre-requisite for secondary evidence. The Non-Availability of Records Certificate (NARC) should not be general or vague, but should confirm to the instructions issued by the Government of India, Ministry of Home Affairs. The instructions, inter-alia, require the State Government to issue an NARC only after due verification from all sources. The NARC is treated valid only when it is furnished by the State Govt. in

the following manner:

> “All concerned authorities of the State Govt. who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.”

**9)** On perusal of the aforesaid provision, it is clear that not only the primary evidence but secondary evidence could also be relied on for grant of pension under the Scheme of 1980 to the applicant-freedom fighter. The applicant is required to submit in support of his claim the certificate of his suffering

atleast for a period of 6 months' imprisonment in the case of general category persons and 3 months in the category of woman, SC and ST freedom fighters. Primary evidence would consist of the certificate on record from the concerned jail authorities, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release. In the present case, facts of the case and reasons for release are not available. Nor is there any secondary evidence in the form of Certificates of two Co-Prisoners (CPCs) freedom fighters who have proven jail sufferings of

minimum 1 year and who were with the applicant in the jail. That could be considered provided the State Government / Union Territory Administration concerned, after due verification of the claim and its genuineness certifies that documentary evidence from the official records in support of the claimed sufferings are not available. In case, the certifier happens to be a sitting or ex. MP or MLA, only one certificate in place of two would be sufficient. Where records of the relevant period are not available, NARC from the concerned authority is a pre-requisite for secondary evidence. The NARC is treated valid only when it is furnished

by the State Government in the manner indicated above.

**10)** It is relevant to note that while the State Government accepted the claim of the petitioner as freedom fighter for the purpose of Rajasthan Swatantra Senani Samman Pension Rules, 1959 but its stand is that criteria, conditioins and considerations for grant of pension under the Rules of 1959 are different than those in the Scheme of 1980 and while there are powers of relaxation in the Scheme of 1959 but no such relaxation can be granted under the Scheme of 1980. The State Government though admits that the petitioner has produced recommendations of his

participation in the freedom movement but he has not been able to prove that he actually suffered imprisonment in the jail and the Central Government on its part has refused to acknowledge the claim of the petitioner only because it has not been recommended by the State Government in accordance with the aforesaid provisions.

**11)** Hon'ble Supreme Court in Gurdial Singh supra in somewhat similar circumstances has held that 'standard of proof required is not as is required in criminal cases on touch-stone of test of beyond reasonable doubt'. In that case while referring to the ratio of the case of Mukund Lal Bhandari supra,their

Lordships observed that the scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. Keeping the object of the scheme in mind, the authorities concerned are required to appreciate the scheme for the benefit of freedom fighters in a rationale manner. A technical approach is not required to be adopted in such matters. As to the standard of proof, their lordships in para 7 observed thus:-

> “The standard of proof required in such cases is not such standard which is required in a criminal case or in a case

adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case o a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are

> expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

**12)** Mukand Lal Bhandari is another judgment on the subject where while elaborating on the object and spirit of

the scheme, their lordships of the Supreme Court in para 5 observed as under:-

> “The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable

sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme

> is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

**13)** What has to be therefore examined is whether on the basis of the available record, action of the respondents in denying the benefit of pension under the Scheme of 1980 can be sustained in law? Application as per the provisions of the Scheme of 1980 for grant of such pension has to be submitted on the given format. Copy of the

application submitted by the petitioner is placed on record. In the light of the claim relating to the conviction / imprisonment, the petitioner has stated that he was imprisoned during 1930-31 on account of his participation in the agitation of salt, untouchability and prohibition of foreign cloths. He was in imprisonment when late Shri Jawala Prasad Sharma and Maulana Shakur had given a call for agitation in 1941 in Ajmer region and was put behind the bars for 20 days under Defence of India Law. In 1934, he was detained in imprisonment for two times for organising Gandhi Jayanti on call given by Mahatma Gandhi in Achhut Kanya Pathshala Ajmer Ahilya Bai

Menchalai under the auspicious of Harijan Sanstha Sewa. In column 4, the petitioner has also stated that when he was under the house arrest for as many as 5-6 occasion and was detained in Central Jail Ajmer, he was subjected to harassment on the basis of which, pension was granted to him by the State Government. The petitioner has placed on record certificate granted by one Shri Ramnarayan Choudhary who himself was a freedom fighter and recipient of pension under the Scheme of 1980 bearing PPO No.1374(E)POL in which he certified that the petitioner was an old social worker who had actively participated in freedom movement. He was frequently detained in

imprisonment by the British Government and harassed. It was certified that though the petitioner was receiving the pension from the State of Rajashan but he deposits the same with the Chief Minister's Famine Fund. Petitioner has also placed on record the PPO No.1811(R) POL which proves that he is recipient of the pension under the Rules of 1959. The list of members and special invitees of All India Freedom Fighters has also been placed on record to show that petitioner is one of its member. Two Members of Parliament on two occasions are admitted to have recommended the case of the petitioner for grant of pension. Certificate of one Shri Captain Durga

Prasad Choudhary, another freedom fighter was also enclosed with the application of the petitioner in support of his claim. In the face of all this material coupled with the fact that the State Government itself has recognised the petitioner as freedom fighter, the question that has to be examined is whether the assertion of the petitioner that he has suffered atleast six months imprisonment during British Raj should be taken to have been proved. The object of the scheme is to reward and compensate the freedom fighters and families of martyrs who gave their everything to the nation. The object thus was essentially to mitigate the sufferings of those who had given

their all for the country in the hours of its need. The spirit of the scheme therefore is to assist as well as honour those who made sacrifices in the freedom struggle. Keeping in view these high objectives, their lordships in Gurdial Singh supra rightly held that “standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties.” Their lordships further held that “the object of the Scheme is to honour, and to mitigate the sufferings of, the freedom fighters, a liberal and not a technical approach should be adopted. Hence, a claim under the Scheme

should be determined on the basis of probabilities and not by applying the test of “beyond reasonable doubt”. Once on the basis of the evidence, it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

**14)** While it may be true that petitioner is not in possession of the proof of record from the jail authorities concerned, to show his sufferings during the freedom struggle but certificates by two fellows freedom fighters of repute

who themselves are recipients of Swatantra Senani Samman Pension, cannot be thrown out lightly. Petitioner who himself has been recognised as freedom fighter by the State Government under the Rules of 1959 and who has also been certified by the freedom fighters of repute, claim of the petitioner cannot be rejected just because the State Government is not in possession of the relevant records to verify or disprove the same. In order to assist and honour the freedom fighter and acknowledge the valuable sacrifices made by him, the relevant statutory provisions ought to be construed liberally so as to advance substantial justice to the freedom

fighter and the technicalities should not be allowed to obstruct the path of justice. The case of the petitioner under the Scheme of 1980 is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt' particularly when the State Government itself has recognised the petitioner as freedom fighter.

As a result of the aforesaid discussion, the writ petition is allowed and respondents are directed to grant Swatantra Senani Samman Pension to the petitioner under the Scheme of 1980 from the date of his application i.e. 28/6/1988 and pay its arrears alongwith

interest @ 6% p.a. within a period of three months from the date of receipt of copy of this order and shall continue to pay such pension during the lifetime of the petitioner who is aged 90 years. In the facts of the case, it is also considered appropriate to award the cost of litigation to the petitioner which is quantified as Rs.2000/- which shall also be paid to him alongwith the aforesaid arrears.

**(MOHAMMAD RAFIQ), J.**

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